IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

**J U D G M E N T**

State of Rajasthan vs. Ganpatlal & another
(1) S.B.CRIMINAL APPEAL NO.385/1978

Gunwant Lal vs. Ganpatlal & others
(2) S.B.CRIMINAL REVISION NO.327/1978

against the judgment dt.7.8.1978 passed by the Additional Sessions Judge, Udaipur, in Criminal Appeal No.153/1973.

Date of Judgment: Sept.14, 2007

P R E S E N T

**HON'BLE MR.JUSTICE DEO NARAYAN THANVI**

Mr.N.M.Lodha )
Mr.K.L.Thakur ) Additional Advocate Generals.

Mr.Doongar Singh )
Mr.Sandeep Mehta ) for accused respondents.

Mr.J.S.Choudhary )
Mr.Suresh Kumbhat ) for complainant.

**REPORTABLE BY THE COURT:**

1. Since both these cases i.e. appeal filed by the State against acquittal of the respondents Ganpat Lal and Hiralal for the offence under Section 406 IPC and revision petition

regarding disposal of the case property filed by the complainant Gunwant Lal, arise out of the judgment & order dated 7.8.1978 passed separately by the learned Additional Sessions Judge, Udaipur, in Criminal Appeal No.153/1977 and Criminal Revision No.72/1977 and are related to the same F.I.R. dated 9.12.1965 (Ex.P.2) filed by the complainant Gunwant Lal before the Superintendent of Police, District Chittorgarh, therefore, both are being disposed-of by this common judgment.

2. In the F.I.R., it is alleged that an ancestral Haveli situated at Chhoti Sadri, District Chittorgarh, was raided and searched by the Department of Central Excise & Customs (sometime in July & August, 1965), which resulted in the recovery of huge quantity of gold bars about 232 kg. & silver bars about 7425 kg. alongwith gold & silver coins. During search, accused respondent Ganpat Lal & Vaji Ram consoled the complainant Gunwant Lal, whereby he developed confidence in him. After search, when he started repairs of his Haveli, he found 51 gold bars measuring three “sers” each which he handed over to Ganpat Lal, Heera Lal and Vaje Ram, who took them to their houses. When amendment was made in the Gold Control Act for declaration of the gold, he demanded gold bars from the abovenamed three persons but they returned only 7 gold bars and assured to return the remaining gold bars later-on at an appropriate time but it

transpired that they were not interested to return the same and had misappropriated it by selling out the same in the market. He, therefore, requested to seize the articles from the accused respondents, who have committed breach of trust. In the F.I.R., he also alleged that Balwant Singh is also involved in it. This F.I.R. was sent to the concerned Court of Chhoti Sadri on 13.12.1965. As per the prosecution story, a news bulletin was announced on 11.12.1965 that the accused respondent Ganpat Lal had offered to weigh the then Prime Minister Shri Lal Bahadur Shastri in gold. The broadcast was heard by Shri Chiman singh, whom the investigation was handed over by the Superintendent of Police and he made an entry to this effect in the police diary. The complainant Gunwant Lal was also informed about this fact by the Superintendent of Police. Prior to this announcement on 11.12.1965, an application was moved by the accused respondent Ganpatlal before the Government for contributing the gold nearly 4500 “tolas”, equal to the weight of the then Prime Minister Lal Bahadur Shastri on his visit to Chhoti Sadri and he requested that he may be permitted to deposit it in the District Treasury of Chittorgarh. Upon this, the Secretary to the Government, Finance Department wrote a letter dated 10.12.1965 (Ex.P.56) to the Collector, Chittorgarh to accept the gold in the Chittorgarh Treasury by giving receipt to the donor and the same may be sent to the Collector, Udaipur for keeping

the same at the Treasury of Udaipur under custody through police guard. The news item to this effect was also published on 12.12.1965 in the newspaper "Hindustan" Ex.P.70, printed from New Delhi on 10th December, 1965. Upon this, the complainant Gunwant Lal issued telegrams Ex.P.64, 66 and 68 on 12.12.1965 stating therein that he read the news item about weighing the then Prime Minister Lal Bahadur Shastri in gold, which was belonging to him, for which he has lodged criminal complaint against accused Ganpatlal for breach of trust and the same was under investigation. On 16.12.1965, respondent Ganpatlal moved an application before the Collector, Chittorgarh that in pursuance to his commitment for donation of gold, he was prepared to hand it over vide Ex.P.57 and consequently the police said to have recovered gold from the field of Ganpatlal vide Ex.P.3, which were in 44 pieces, out of which 7 big and 37 small pieces of gold were dug from the field of respondent Ganpatlal weighing 57 kg. The same was deposited in the Government Treasury at Chittorgarh, the receipt Ex.D.19 whereof was given to the accused Ganpatlal. On 18.12.1965, the investigating officer Chiman Singh (PW 52) moved an application Ex.P.9 before the Collector requesting him to permit the gold to be shown to complainant Gunwantlal. On seeing the gold, Gunwantlal claimed the same to be belonging to him but requested that some more gold is still lying with the accused

respondents. On 19.12.1965, Ganpatlal was arrested vide Ex.P.72. Accused Balwant Singh and Heera Lal were arrested on 1.3.1966. Balwant Singh died before the commencement of trial at whose instance, 3 pieces of gold weighing 4.900 kgs. were recovered vide Ex.P.26. On 7.3.1966, Hiralal furnished information vide Ex.P.75 and two pieces of gold weighing 2.323 kgs. were recovered from him vide Ex.P.25. During investigation, it was also found that some gold and gold ornaments were recovered from various persons, which evidence was not believed by the trial Court. After completion of the investigation, accused respondents alongwith Kishan Singh and Bherulal were chargesheeted. After hearing the arguments on charge, accused Ganpatlal and Heeralal were charged under Section 406 IPC and Kishan Singh and Bherulal under Section 414 IPC. The prosecution examined 54 witnesses. The statements of accused were recorded under Section 342 of the old Criminal Procedure Code. After conclusion of the trial, Kishan Singh and Bherulal were acquitted of the offence under Section 414 IPC but respondents Ganpatlal and Heeralal were convicted of the offence u/sec.406 IPC and sentenced to three years' rigorous imprisonment by the Assistant Sessions Judge, Udaipur vide his judgment dated 11.1.1975 and to pay a fine of Rs.50,000/- each and in default, to further undergo nine months' R.I. The gold articles were ordered to be delivered by the police to the

concerned Gold Control Officer by virtue of Section 110(2) of the Gold Control Act. Both the accused viz; Ganpatlal and Heeralal filed appeal against the order of conviction recorded by the Assistant Sessions Judge, Udaipur. Learned Additional Sessions Judge, vide his judgment dt.7th August, 1978, acquitted both accused respondents for the offence u/s.406 IPC by holding that neither the complainant Gunwant Lal has been able to establish his ownership over the gold nor entrustment of gold to the respondents has been proved. Learned Additional Sessions Judge also disbelieved the theory of demand, extra judicial confession and recovery. He also dismissed the revision petition of the complainant with regard to return of gold by holding that it has become infructuous on account of being acquittal of the accused & confirmed the order of return of gold to the Gold Control Officer under Section 110(2) of the Act, passed by the learned trial Judge.

3. Against this, the State has filed an appeal against the order of acquittal & complainant Gunwant Lal has filed a revision petition against the order of delivery of gold to the Gold Control Officer.

4. I have heard the arguments of both the sides and also gone through the record of the case carefully.

5. Nr.N.M.Lodha & Mr.K.L.Thakur, Additional Advocate Generals appearing on behalf of the State, have argued that the judgment of the learned Additional Sessions Judge acquitting the accused respondents in such a case of recovery of large quantity of gold, suffers from infirmities and no convincing reasons have been assigned in reversing the finding of conviction recorded by the trial Judge. According to them, the learned trial Judge has elaborately appreciated the evidence on record and upon production of gold at the instance of the accused and its identification by the complainant, the conviction was recorded. The finding of the learned trial Judge on the issue regarding the entrustment of 51 gold bars to accused Ganpatlal, Heeralal and Balwant Singh had been fully established vis-a-vis the demand made by him from the accused and recovery was also established but the learned Additional Sessions Judge in appeal, has set aside the finding of the learned trial Judge on surmises, therefore, the conviction should be maintained and revision petition regarding return of gold to the complainant also deserves to be dismissed because of the provisions contained in Section 110(2) of the Act.

6. On the contrary, Mr.Doongar Singh and Mr.Sandeep Mehta, learned counsel appearing for the accused respondents, have supported the judgment of learned Additional Sessions Judge

both on the finding of acquittal as also the order for return of property to the department of Gold Control. It has also been argued by learned counsel for the accused respondents that theory of entrustment has been concocted soon after the flash of radio news about weighing the then Prime Minister Shri Lal Bahadur Shastri on 11.12.1965 and the F.I.R. was antedated after this news item. No recovery was effected from the accused respondents pursuant to any information furnished by them but respondent Ganpatlal voluntarily surrendered the gold, which was belonging to him. Since the complainant has not been able to identify the gold bars, alleged to have been handed over to the accused, there was no question of returning the same to him. Learned counsel for the accused respondents have also drawn the attention of this court towards many infirmities in the statements of the witnesses, who were said to be present at the time of entrustment and demand from the accused. According to them, when the whole house was searched thoroughly with the metal detectors as back as in August, 1965, there was no occasion to find 51 gold bars left in the house of complainant Gunwant Lal. The F.I.R. has been lodged merely because Gunwantlal wanted himself to be the big millionaire of the area, as his ancestors were and he thought that how other persons than him can weigh the then Prime Minister Shri Lal Bahadur Shastri and in order to wreak vengeance, he has fabricated this

case by falsely implicating the accused respondents. According to them, it is very surprising that when 51 gold bars of 3 "sers" each measuring 143 kgs. approximately were handed over to Ganpatlal, how only 57 kg. gold from accused Ganpatlal, 2.323 kgs. from Heeralal & 4.900 kgs. from Balwant Singh respectively, were recovered for which no proper identification has been given by the complainant. While supporting the judgment of the learned Additional Sessions Judge, both the learned counsel have prayed for dismissal of this appeal as well as the revision petition, which is not maintainable on account of being a second revision.

7. Mr.J.S.Choudhary & Mr.Suresh Kumbhat, learned counsel appearing for the complainant, have supported the judgment of the learned trial Judge dated 11.1.1975 and argued that the gold was belonging to complainant Gunwant Lal and that the case property which was belonging to the complainant, could not have been delivered to the Gold Control Office but it should have been delivered to the complainant by virtue of Section 452 Cr.P.C. Neither the trial Court nor the appellate Court ordered enquiry under Section 452 CrPC for disposal of the property and merely on the basis of the provisions under the Gold Control Act, the same has been delivered to the concerned office, whereas the complainant has claimed the gold bars right from the beginning,

which is supported by the evidence of material witness Mohd.Hussain in whose presence, the gold bars were entrusted to the accused respondents.

8. Before dealing with the question of disposal of case property at the conclusion of the trial as envisaged under Section 452 CrPC, it will be appropriate to examine the correctness of finding of acquittal under Section 406 IPC recorded by the learned first Appellate Court. The first Appellate Court i.e. the Additional Sessions Judge, Udaipur while acquitting the accused respondents formulated five questions with regard to the entrustment of the gold by the complainant from his Haveli to the accused respondents and demand made by him for return of the gold alongwith extra judicial confession made by the respondent Ganpatlal and recoveries of the gold. Learned first Appellate Court after re-appreciating the evidence, came to the conclusion that the whole episode of chance recovery of gold is shrouded in mystery. He also came to the conclusion that the story of entrustment sounds highly improbable & not inspiring confidence vis-a-vis the story of demand & unreliability of the extra judicial confession made by the accused Ganpatlal. The first Appellate Court also opined that production of gold by accused Ganpatlal was an innocent act in the light of the statement given by the then Collector Shri Mathuranath Pancholi,

P.W.49. While concluding the finding, the learned Additional Sessions Judge also noticed many infirmities like antedated F.I.R. Ex.P.2, interpolation in recovery memo Ex.P.3, withholding of material oral and documentary evidence including the record of State Bank of Bikaner and Jaipur pertaining to the purchase of Bonds by the complainant Gunwant Lal in exchange of 7 bricks of gold and panchnama prepared by the raiding party pertaining to details of digging in the Haveli of the complainant Gunwant Lal. On the contrary, the learned trial Judge came to the conclusion that from the last week of August, 1965 to the beginning of September, 1965, the raid was conducted and thereafter, the complainant Gunwant Lal found 51 gold bars in his Haveli on its repair and entrusted the same to accused Ganpatlal, Heeralal and Balwant Singh, who failed to return the same to the complainant inspite of repeated demands. When the accused respondent Ganpatlal offered to weigh the then Prime Minister in gold and donated the same to the Government, there was a clear case of criminal breach of trust. Learned trial Court also rejected the argument advanced from the side of the accused respondents that entrustment of a contraband article like gold cannot be termed as a property for the purpose of an offence under Section 406 IPC.

9. Having gone through the oral & documentary evidence on

record and its appreciation by the trial Court and the first Appellate Court, it will be just & proper to analyze the definition of criminal breach of trust given in Section 405 IPC which is made punishable under Section 406 IPC. Section 405 IPC reads as under:

> **"405. Criminal breach of trust**.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

10. To bring home the guilt of the accused under Section 406 IPC, Section 405 requires that there must be an entrustment of property or with any dominion over property to any person and secondly the person entrusted with that property dishonestly misappropriates or converts itself into his own use. The entrustment may be in any manner. As the opening words of the Section speaks, the term "entrustment" denotes that the person who is handing over any property, must have a relationship with the person to whom the property is entrusted. That relationship must be coupled with the confidence in the person to whom the property is handed over. It is not obligatory that the property

must belong to the complainant. A trust is an obligation arising out of the confidence reposed and accepted by the owner. When such property is disposed-of either for the own use of the person who has dominion over the property or is used in violation of the legal directions of contract with a dishonest intention, it amounts to criminal breach of trust. If this definition of criminal breach of trust is illustrated in the light of English Law which represented in India then, it transpires that every offence of criminal breach of trust involves civil wrong in respect of which the complainant may file a suit for damages. This civil wrong becomes a subject of criminal prosecution, if it is coupled with the dishonest mental act. If the above definition is looked into in the light of the present case, many factors are required to be considered as to under what circumstances, the entrustment of 51 gold bars was made to the accused respondents and how they dishonestly misappropriated or committed breach of trust.

11. On the question of this entrustment, before dealing with the oral evidence of complainant Gunwant Lal (PW 50) and his driver Mohd.Hussain (PW 48), it will be appropriate to have a look on the F.I.R. and the recovery memos. The original F.I.R. is Ex.P.2, which is said to have been lodged on 9.12.1965 before the Superintendent of Police, Chittorgarh by complainant Gunwant Lal. In the F.I.R., it has been alleged that when the raid

was conducted in his Haveli at Chhoti Sadri, he made repairs of the Haveli thereafter and during that time, he found 51 gold bars measuring 3 “sers” each which he handed over to accused respondents Ganpatlal, Heeralal and Vaji Ram because he developed strong confidence in accused Ganpatlal on account of he being consoled by them at the time of raid. When the amendment was made in the Gold Control Act, to give declaration of the gold, he demanded gold bars from them. They returned only 7 gold bars but did not return the remaining 44 gold bars. There is neither reference of any mark on the gold bars in this F.I.R. nor any specific date has been given as to on what date, these 51 gold bars were entrusted to the accused respondents. In the absence of any document with regard to entrustment of such huge number of gold bars to a person, who made simple consolation at the time of raid, casts high improbability as to how without any written document, such huge quantity of gold bars was handed over and on which date. The F.I.R. is dated 9.12.1965 and in its first page where month and year are hand written and date is typed whereas in the back, when the complainant signed the F.I.R., date and month are hand written and year is typed. The first Appellate Court has noticed this fact that copy of F.I.R. (Ex.P.2) reached to the concerned Court on 13.12.1965. The copy of this report Ex.P.69 is further postdated by the concerned S.H.O. from 11.12.1965 to

13.12.1965. It is at page 4 of F.I.R. Ex.P.69 and it reached to the concerned Court on 13.12.1965. No explanation has been given in this regard by the investigating officer Chiman Singh (PW 52) in his statement about filling the blanks and making alteration in the dates in the F.I.Rs. Ex.P.2 and Ex.P.69, which if looked into from the angle of radio news on 11.12.1965 and news bulletin of 12.12.1965 (Ex.P.70), wherein it has been stated that the then Prime Minister Shri Lal Bahadur Shastri will be weighed at Chhoti Sadri on account of gold donated by accused Ganpatlal and the letter of the Finance Secretary dated 10.12.1965 (Ex.P.56) in which he wrote to the Collector, Chittorgarh to accept the gold donated by accused Ganpatlal for weighing the then Prime Minister, a reasonable inference which can be drawn is that there was no question of lodging the F.I.R. before the Superintendent of Police on 9.12.1965. Had the F.I.R. been lodged on 9.12.1965, there was no question of Finance Secretary writing a letter on 10.12.1965 to accept the gold in Chittorgarh Treasury and release of radio bulletin on 11.12.1965 and news item on 12.12.1965. Had there been any F.I.R. on 9.12.1965 in the normal course, neither the Government of Rajasthan nor the Media could have flashed such news and on the contrary, they could have certainly flashed this news when the F.I.R. had been lodged in this matter for criminal breach of trust. It is only on 12.12.1965 when complainant Gunwant Lal

sent telegrams Exs.P.64, 66 and 68 regarding weighing the then Prime Minister in the gold which was handed over to accused Ganpatlal, who is said to have committed criminal breach of trust and the matter is under investigation, the criminal machinery came into motion. The conclusion of the learned first Appellate Court that there was no explanation about sending the F.I.R. to the Court after four days and the possibility of registering the case in a back date, cannot be ruled out, finds favour from the circumstances as indicated above.

12. When the very foundation of the F.I.R. itself is weak and concocted, the theory of entrustment also becomes very improbable because again, when the gold was produced by the accused respondents vide Ex.P.3, 44 gold bars (7 big and 37 small) were taken out after digging the field of Ganpatlal by one and half feet, the weight of which was 57 kg. in the presence of Collector, S.P. and the Treasury Officer of Chittorgarh with other motbirs. There is also no mark on these recovered 44 items whereas in the statement in the Court, he has stated that out of 51 kg. gold bars which he took out from the outer verandah, there were three gold bars of which he still remembered the number as G5917, G4942 and G5926 and there was a mark of MM Mint in Bombay, in addition to the foreign mark. This statement was recorded during trial which he did not mention in

the F.I.R. Ex.P.2 nor the number of these gold bars was there in the recovery memo Ex.P.3. In his F.I.R., he has not stated as to how he found these 51 gold bars except that he found it on repairs after search but in his statement, he has stated that this incident was of two days after the search. If the entrustment was two days after the search i.e. in the first week of September, 1965, why he kept silent till 9.12.65 or 12.12.65 that he has entrusted the 51 gold bars to accused Ganpatlal and others. Non-explanation of these important facts reveals that the story of finding 51 gold bars at the time of repair, its entrustment and demand is after thought, especially when whole Haveli was thoroughly searched by the raiding party. This can be further fortified from the finding of the learned Additional Sessions Judge that neither the witnesses from the raiding party were produced, who dug the Haveli nor in the site plan Ex.P.1, it has been shown as to from where the complainant Gunwant Lal took out these 51 gold bars except that it is mentioned that it was taken out after removing slab stone by Mohd.Hussain, who saw handing over the same to the accused by sitting 10 to 15 steps away on a "Chabutara". That apart, it has rightly been held by the first Appellate Court that the property of gold bars was ancestral one and while entrusting the same to only one time known man who consoled him at the time of raid, he did not even inform his father, who was alive at that time. The explanation of the

complainant Gunwant Lal that he did not disclose this fact to his father because of leakage, has rightly been observed to be quite funny by the learned first Appellate Court. If this statement of complainant Gunwant Lal (PW 50) is read in the light of the statement of Mohd. Hussain, who was solitary witness at the time of getting 51 gold bars after raid, who has stated that two days after the raid, when the repairing was being done, he saw some yellow items in the side at the time of digging of floor from tyre lever, he then left away to the market and came after one and half to two hours. This version of Mohd. Hussain (PW 48) that he left in the market and came after about two hours, is totally inconsistent with the statement of complainant Gunwant Lal, who has said that Mohd.Hussain was sitting at Chabutara, 10 to 15 steps away when the slabs were taken out. Further, as held by the learned Additional Sessions Judge, there is no reference of Mohd.Hussain in the F.I.R., Ex.P.2, when these 51 gold bars were entrusted to the three persons in his presence, out of whom two were made accused, with 17 each. In this way, the whole theory of digging and repairing of verandah and taking out 51 gold bars and entrusting the same to the accused respondents, as held by the learned Additional Sessions Judge, is highly improbable and after thought, which appears to be based on sound reasonings and after careful scrutiny of the evidence on record.

13. Under the Criminal breach of trust, an obligation is attached to the ownership of the property and arising out of the confidence reposed and accepted by the owner. When the ownership or dominion over the property itself is doubtful, a property which on the date of entrustment, was not permissible to be retained by any person under the provisions of the Gold Control Rules of 1963 read with the Defence of India Rules, 1962 and was an offence, there was no question of ownership or entrustment of a property and cannot be said to be a valid property within the definition of Section 405 IPC. Any entrustment of an illegally acquired or possessed property or its transfer, amounts to an offence punishable under the Gold Control Act and the property, which is subject matter of contraband article like gold under the Gold Control Act, cannot be said to be a property within the definition of Section 405 IPC, which could have been legally entrusted. Though, it is a debatable question as to whether a contraband article is a property within the definition of Section 405 IPC but for the sake of argument and to hold a person liable under the Penal Law, the Court can very well go into its true interpretation for the purpose of satisfying the ingredients of the Section. When there was an entrustment of contraband property, its demand was also illegal in addition to the finding of the learned first Appellate Court that he sent emissaries to the accused respondents for return of gold

bars. Especially on one hand, he comes out with the fact of handing over the gold bars without informing his father and on the other, sending certain emissaries like Hasan Khan (PW 9) and Badrilal (PW 10) for raising his demand. Neither any letter was given to these emissaries nor the emissaries were knowing the address of the persons from whom the demand was to be made and that apart, neither the seven gold bars, which are said to have been returned by accused Heeralal, had been entered into the books of accounts nor its bonds, purchased from SBBJ Branch Chittorgarh, have been produced in the Court. In this way, the learned first Appellate Court has rightly held that the story of demand does not inspire confidence and it appears to be an invention of necessity alone.

14. The prosecution has also relied upon the evidence of extra judicial confession of accused Ganpatlal and recovery. There are many witnesses of extra judicial confession, said to have been recorded in Ex.P.20 but this Ex.P.20 is the memo prepared in the presence of Collector, Superintendent of Police, S.D.O., T.O. and Dy.S.P., Chittorgarh, where 44 bars of gold were opened and sealed and were kept in the Treasury. The statements of these witnesses were relied upon by the trial Court in pursuance to the memo Ex.P.20, but as held by the learned Additional Sessions Judge, accused Ganpatlal was not present in the Treasury on

18.12.1965, when the memo was prepared. Had he been present, there was no reason to arrest him on the next day i.e. 19.12.1965. The extra judicial confession under the Criminal trial is a weak type of evidence and it should be established conclusively, hence the finding of the learned Additional Sessions Judge in not relying upon such type of shaky extra judicial confession, is based on sound reasoning.

15. So far as the recovery is concerned, as discussed above, right from 9.12.65 till 18.12.65, when the gold was kept in the Treasury vide Ex.P.20 and on 9.12.65 when the F.I.R. is said to have been written, there was no reference of the marks said to have been stated by the complainant Gunwant Lal in his statement, therefore, the recovery of contraband gold from the field of accused Ganpatlal has nothing to do with the act of criminal breach of trust. This recovery was made in the presence of the Collector M.N.Pancholi (PW 49), who has categorically stated that the production of the gold has nothing to do with the criminal case. Learned trial Judge has also held that recovery memo Ex.P.3 has been interpolated at portion "R to S" by adding this portion later on because the language of the recovery memo and portion "R to S" regarding memo of recovery, if excluded from the rest of the portion of the memo, the memo nowhere speaks to be a case of recovery holding a man liable under the

criminal act.

16. That apart, out of 51 gold bars of 3 "Ser" each, which comes to 143 kgs. approximately was entrusted but recovery has been made only of 44 gold bars (7 big & 37 small) to tally the figure by including 7 gold bars for which bonds were purchased, which comes to 57 kg. only in addition to recoveries from Heeralal and Balwant Singh of about 7 kg., which is approximately 64 kgs. This recovery is just less than half of the total gold bars entrusted. This itself is a great mystery as to where the rest of the gold approximately 79 kgs. went & why investigating officer failed to detect it. Thus, it was a case of fake recovery.

17. Thus, the finding of the learned first Appellate Court is based on sound reasonings and appreciation of oral and documentary evidence, in contrast to the finding of the guilt arrived at by the learned trial Judge. The learned trial Judge has simply arrived at the conclusion of the guilt of the accused on the basis of voluminous evidence of a huge quantity of gold recovered which was a contraband article at the relevant time. The Courts while arriving at a finding of guilt, must base its decision not on surmises, conjectures and probabilities vis-a-vis fear of acquittal or conviction, irrespective of its face value, but

on the sound principles of Criminal Jurisprudence, which says that an accused is presumed to be innocent unless the guilt is proved beyond any reasonable shadow of doubt. Accordingly, there is no hesitation in upholding the findings of the learned first Appellate Court on the acquittal of the respondents Ganpatlal & Heera Lal.

18. The next question is about the disposal of the property. It is true that the learned trial Judge has passed the order of recovered gold bars conveying to the nearest Gold Control Office by virtue of Section 110(2) of the Gold Control Act because of the guilt of the accused. This is the order passed under Section 452 CrPC, which normally a Criminal Court passes at the conclusion of the trial. This order is ofcourse appealable under Section 454 CrPC, but inspiting of filing an appeal, a revision was filed by the complainant before the learned Additional Sessions Judge, who by his order dt.7.8.78, dismissed the revision as having become infructuous by confirming the order of the learned trial Judge regarding delivery of the gold to the Gold Control Officer. Though, under wrong provisions of law, the revision has been decided by the first Appellate Court and so also this present revision petition has been filed as there cannot be a revision against the order of revision. However, in exercise of the powers vested to this court under Section 482 CrPC, this

petition is treated accordingly and in view of the findings arrived at as above, there is no need of sending the case back to the trial Court for disposal of the case property in accordance with law under Section 452 CrPC, because firstly, as held, the recovered gold was not proved to be in ownership of the complainant as it was a contraband article at the relevant time; secondly, the trial court has already passed the order under Section 452 CrPC for delivering it to the Gold Control Authority by virtue of Section 110(2) of the Act at the conclusion of trial and thirdly, no record of wealth tax has been proved in the trial prior to the recovery of seized gold and whatever record has been shown to the court is of later years. Therefore, the order of the trial Court as well as that of first Appellate Court on disposal of property need no interference by this Court.

19. Consequently, the appeal against the order of acquittal of accused Ganpatlal and Heeralal under Section 406 IPC passed by the Additional Sessions Judge, Udaipur, by his judgment dated 7.8.1978 as well as the revision petition filed by complainant Gunwant Lal for disposal of the case property, are dismissed.

**(DEO NARAYAN THANVI), J.**

RANKAWAT JK, PS